IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 794 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PREZI SEMUAL CHRISTIAN - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HEMANT B RAVAL for Applicant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR HR PRAJAPATI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/08/2007

ORAL JUDGMENT

1. Rule. Shri K.T.Dave, learned APP waives service of rule on behalf of the respondent No.1 – State and Shri H.R.Prajapati, learned advocate waives service of rule on behalf of the respondent

No.2. With the consent of the learned advocates appearing on behalf of the respective parties, this matter is taken up for final hearing today.

2. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner - original applicant has prayed for an appropriate writ, direction and/or order quashing and setting aside the order dated 16.3.2007 passed by the learned Family Court No.2, Ahmedabad in Criminal Misc. Application No.1658 of 2005 in dismissing the application submitted by the petitioner for herself and her minor child for maintenance under section 125 of the Criminal Procedure Code.

3. The petitioner – wife of the respondent No.2 submitted application under section 125 of the Criminal Procedure Code in the learned Family Court, Ahmedabad being Criminal Misc. Application No.1658 of 2005 for claiming maintenance at the rate of Rs.1,500/- per month for herself and for her minor child and the

learned Judge, Family Court No.2, Ahmedabad by its judgment and order dated 16.3.2007 has dismissed the said application qua both the original applicants by holding that the petitioner – wife is without any reasonable cause not residing with the respondent No.2 – husband. Being aggrieved and dissatisfied with the judgment and order passed by the learned Judge, Family Court, No.2, Ahmedabad dated 16.3.2007 passed in Criminal Misc. Application No.1658 of 2005, the petitioner has preferred present application under Articles 226 and 227 of the Constitution of India.

4. Shri H.B.Raval, learned advocate appearing for the petitioner has vehemently submitted that without entering into further controversy and/or merits of the case, the learned Judge has materially erred in rejecting the application even of the minor child considering the fact that the petitioner – wife is not residing with her husband without reasonable cause. It is submitted that so far as minor child is

concerned, he is to be paid maintenance irrespective of the fact whether petitioner – wife is residing separately and/or not residing with her husband for justifiable and reasonable cause and therefore, it is submitted that the learned Judge has materially erred in rejecting the application for maintenance even qua the minor child and therefore, it is requested to allow the present application qua the minor child Krish.

5. On the other hand, Shri Prajapati, learned advocate appearing for the respondent No.2 – husband though not in a position to satisfy the Court with regard to entitlement of the maintenance of the minor child has submitted that the respondent No.2 – husband is not earning and is not in a position to pay any maintenance even to the minor child as the respondent No.2 himself is approximately aged about 21 years. Therefore, it is requested to dismiss the present petition and not to pass any order with regard to maintenance even qua the

minor child.

6. At this stage, Shri Raval, learned advocate appearing for the petitioner has submitted that it is the duty of the father to maintain the child and he cannot raise his hands by submitting that he is not earning. He has to maintain the child and even wife also once he has got married and got child.

7. Shri K.T.Dave, learned APP has requested to pass an appropriate order and has submitted that respondent No.2 – father is required to maintain the minor child and is required to pay the maintenance.

8. Heard the learned advocates appearing on behalf of the respective parties.

9. An application was submitted before the learned Family Court under section 125 of the Criminal Procedure Code for getting maintenance by th wife for herself and her child. The learned

Family Court has dismissed the said application by holding that the petitioner is adamant and has deserved her husband without reasonable and justifiable cause. Be that as it may, this Court is at present not consider the legality and validity of the said order with respect of the claim of maintenance by the wife, however, it is required to be noted that the said application was for getting the maintenance for the wife as well as for minor child and so far as the minor child is concerned, irrespective of the fact that whether the petitioner – wife has deserted her husband and/or residing separately for reasonable and justifiable cause or not, a minor child is entitled to get the maintenance from the father so long till he becomes major. While rejecting the said application, the learned Family Court has not considered the said aspect and straight away mechanically rejected the said application qua both the applicants. Under the provisions of the Criminal Procedure Code, more particularly, under section 125 of the Criminal Procedure Code, a minor child is entitled to the

maintenance from his parents. The respondent No.2 being a father, the minor child is entitled for the maintenance from him. Under the circumstances, the learned Family Court has erred in rejecting the application for maintenance qua for minor child – Krish.

10. Now, so far as the contention on behalf of the respondent No.2 – husband – father that he is not earning anything and therefore, he is not in a position to make the payment of maintenance amount is concerned, it is required to be noted that when he has got married and got child, it is his obligation to maintain his family members. He cannot escape from the said liability and raise his hands after marriage and having a child by submitting that he is not earning. It is his social and moral obligation to maintain his wife and minor child.

11. Looking to the price rise and the standard of living and the expenses to be borne for maintenance of the minor child – Krish, he is

entitled to the maintenance, which is quantified at Rs.1500/- per month to be paid from the date of application being Criminal Misc. Application No.1658 of 2005.

12. For the reasons stated above, petition succeeds in part. The impugned judgment and order passed by the learned Family Court No.2, Ahmedabad dated 16.3.2007 passed in Criminal Misc. Application No.1658 of 2005 is hereby quashed and set aside by directing the respondent No.2 to pay the maintenance of minor child – Krish at the rate of Rs.1,500/- per month from the date of filing of Criminal Misc. Application No.1658 of 2005 and arrears to be paid within a period of one month from today and the respondent No.2 is further directed to continue to pay the maintenance at the rate of Rs.1,500/- per month between 1st and 7th day of each month regularly. The petitioner is also entitled to the costs of the present petitioner, which is quantified at Rs.5,000/- which also the respondent No.2 is directed to pay within a period of one month

from today. Rule is made absolute accordingly.

[M.R.Shah, J.]

kdc